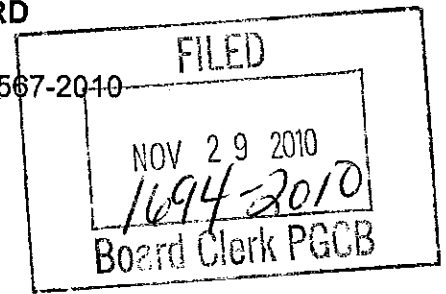


BEFORE THE  
PENNSYLVANIA GAMING CONTROL BOARD

IN RE: BUSHKILL GROUP INC.

CATEGORY 3 LICENSE APPLICANT

DOCKET NO.: 1567-2010



**BUSHKILL GROUP INC. MEMORANDUM**  
**IN SUPPORT OF ITS APPLICATION FOR A CATEGORY 3 LICENSE**

**I. SUMMARY OF ARGUMENT**

Throughout the recent hearings, Bushkill Group Inc. ("Bushkill") listened carefully to the questions and concerns of the Board. There are indications that a true alignment of interests would occur if one single Applicant could:

- a) generate the highest amount of tax revenue for the Commonwealth; and,
- b) provide the greatest enhancement of tourism to Pennsylvania; and,
- c) maximize the intended benefits to the Pennsylvania Race Horse Development Fund ("PARHDF").

Bushkill supports the Board's focus on these intended benefits of gaming in Pennsylvania, and the possibility of securing all three with the award of this license. Bushkill believes that each goal will be best achieved in the following ways:

- a) generate the highest tax revenue for the Commonwealth by putting the machines where the people are; and,
- b) achieve the maximum enhancement of tourism by awarding the license to the location with the greatest capacity for additional guests; and,
- c) protect the Horsemen by awarding the license to a location that has the lowest negative impact on any existing Category 1 facilities.

Bushkill is highly encouraged because its Fernwood Hotel & Resort ("Fernwood") is the only resort among the Applicants capable of providing the best results in all three of these goals. Bushkill believes it has met the requirements of eligibility and suitability through its application and testimony by clear and convincing evidence. In this post hearing brief, it is Bushkill's intent to demonstrate, as concisely as possible, that it is the only Applicant able to achieve all three of these goals. For the Board's convenience, Bushkill has attached as Exhibit "A" a brief summary of material points.

**A. Bushkill will produce the highest tax revenue to the Commonwealth.**

Each Applicant presented expert testimony on revenue. Each expert used some version of the gravity model and each proclaimed their model to be the best, disparaging the models of the other Applicants.

Because of Woodlands Fayette, LLC's ("Woodlands") remote location and low population, they have projected the lowest revenue of any Applicant, even though, for their own projections, they used an unrealistic and unprecedented 200-mile radius day trip market. As a result, they were forced to hire an expert who would say that all other Applicants had over-projected revenue.

However, is the testimony of hired experts paid to deliver a result the equivalent of the projections of a proven operator who has already delivered 99% accurate projections to the Commonwealth? Bushkill suggests no, as its projections were prepared by Penn National Gaming, Inc. ("Penn National"), a company that is both financing and managing the proposed Fernwood casino. Opponents of Bushkill have failed to answer the most important question: What would Penn National have to gain by over-projecting? Penn National developed its revenue model for this project and, only then, agreed to move forward, setting a financing amount and management fee commensurate with its projections. For Penn National to take

on this project, it had to be convinced it would work, meaning its projections had to be accurate.

As a current Pennsylvania licensee, Penn National was not, nor could it be, hired to deliver a revenue number, testify at a hearing and walk away. As Mr. Snyder indicated in his testimony, Bushkill is likely to produce the most revenue.<sup>1</sup>

**B. Bushkill proposed casino is in the least saturated market of all Applicants.**

In addition to claiming that Penn National has over-projected, another method used by challengers of Bushkill was to claim "market saturation." To do so, they produced elaborate maps showing only the number of casinos near each Applicant and suggested overlap of market area. None of their maps provided any information on population (particularly out of state population) or machine availability. In other words, the other Applicants chose not to let objectively verifiable facts get in the way of their story. To use Woodlands as an example, Bushkill has 28.2 million people within a 100-mile radius, compared to Woodlands which has 4.7 million. How many more gaming positions can a population of 28.2 million support than a population of 4.7 million? Within 100 miles of Woodlands, there are 46.8 machines for every 10,000 adults. Compare that to Bushkill, with only 12.3 machines per 10,000 adults, making it the least saturated of all Applicants.

Bushkill's opponents would have you believe that the only consideration is number of casinos. Their argument in this respect is either deliberately misleading to bolster the interests of their paying clients, or shows a profound lack of understanding. Pennsylvania has an abundance of fireworks stores all located near each other and clustered along the border of neighboring states. Certainly this is not by chance. They are there because that is closest to where the people who frequent their stores live. It is the same for the proposed

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<sup>1</sup> Bushkill Group Inc. November 16, 2010 Board Hearing Transcript ("Bushkill's Transcript"), pgs. 31-34.

Fernwood casino. Patrons from New York and New Jersey are Bushkill's current market. Penn National estimates that up to 70% of Bushkill's gaming patrons will come from those states.<sup>2</sup> Bushkill is immediately adjacent to the largest Designated Market Area ("DMA") in the nation, comprising 28.2 million people in a 100-mile radius. Mason Dixon Resorts, LP's ("Gettysburg") is just half of that total population and Woodlands' is just one-sixth.

As a result, Woodlands is forced to expand its population circle for day-trippers to 200 miles, necessitating a round trip of at least seven hours, although that assumes an average speed of almost 60 mph and no stops. Looking at the road system serving Woodlands, it is highly unlikely that anything approaching those speeds could be achieved. It defies logic that a patron would drive 3.5 - 5 hours, play a round of golf, play at the casino and then face a return trip of equal length. Yet Woodlands needs this to be believed, as it is the basis of their revenue projections. It is an indisputable fact that a casino does not work without the requisite population.

If Bushkill were to take the position of Woodlands and say that it would receive day-trippers from 200 miles, its projected market would be a staggering 48.2 million people. Bushkill has already shown that the NY/NJ market is well within its reach, as the majority of its current visitors already come from that market. Bushkill does not need to make any wild claims about reaching a market it does not already serve to justify its revenue projections.

One final point on Woodlands' experts. Their use of a 200-mile day-trip market to inflate their revenue projections indicates that they fully understand the impact of population on play. This raises the question of why they ignored population when comparing to Bushkill and claiming that Bushkill's market was saturated.

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<sup>2</sup> Bushkill's Transcript, pg. 76.

The only useful measure of market saturation is machine density by population. The most egregious failure by the other Applicants and contestants to the Fernwood casino was their blatant disregard of the most accurate and obvious measure of saturation. It is apparent that the challengers ignored this measure because it makes their arguments against Bushkill completely specious.

Based on the number of machines available for play, when compared to population, Bushkill is in the most under-served market amongst the Applicants, as shown in the following table.

<b>Applicant</b>	<b>Slot Machines Per 10,000 Adults (100-mile Radius)</b>
Bushkill	12.3
Holiday Inn	12.4
Gettysburg	14.7
Woodlands	46.8

There is no other more accurate measure. The facts cannot be manipulated by experts to suit their client's wishes. The new machines must go to the location with the best ratio between players and machines in order to generate the greatest new incremental revenue. Woodlands' market is almost four times more saturated than any of the other Applicants. The notion that introducing even more machines into the smallest market with the highest ratio of machines could produce any new incremental revenue to the Commonwealth defies logic.

Although not raised at the hearings, a speculative argument could be made as to how machine density would be affected if existing casinos in the 100-mile radius of each Applicant were to increase their current slot count to higher or maximum levels. However, even if one was to arbitrarily double the current slot count (ignoring statutory maximums in some cases) for every casino in each Applicant's market, Bushkill's market clearly remains the most under-served as shown in the following table.

Applicant	Slot Machines Per 10,000 Adults (100-mile Radius)
Bushkill	24.6
Holiday Inn	24.8
Gettysburg	29.4
Woodlands	93.6

The analysis of market saturation begins and ends with the ratio of machines to people and regardless of whether one considers the current count or a fictional potential count, Bushkill clearly has the best ratio of all Applicants.

**C. Any impact on other casinos is mitigated by Bushkill producing the most new revenue.**

The issue of cannibalization is an interesting one because there are no comparisons of any real value. No restricted access casino exists in a market with free access casinos. As before, each expert claims to have the best model for predicting a phenomenon they have never seen. This is particularly demonstrated by TMG's approach on behalf of Woodlands, where in truth, they arbitrarily reduced other Applicant's revenues and applied inexplicably high cannibalization rates, and then proclaimed Woodland's numbers to be the best.<sup>3</sup>

When reviewing the underlying facts in a direct comparison between Woodlands' and Bushkill, it is clear that TMG applied a miniscule cannibalization rate for Woodlands, thus estimating \$65 million in new revenue from a 200 mile population of 21.3 million, while applying a cannibalization rate nine times higher for Bushkill and new revenue one third lower at \$42 million from an equivalent population two times larger at 48.2 million. Also of note, the pure math which renders Woodlands' surrounding market as the most saturated in terms of available machines to adult population has been completely ignored throughout the many pages of the TMG analysis.

<sup>3</sup> Woodlands Fayette, LLC, November 17, 2010 Board Hearing Transcript ("Woodlands' Transcript"), pgs. 65-73 and 123-124.

This tactic of taking the best of all scenarios for their client, while applying the worst of all scenarios to a competing applicant renders TMG's analysis baseless and without meaning. To remove any interpretation or arbitrary changes to each Applicant's projections, if the Board accepts each Applicant's projected revenue and their self proclaimed cannibalization rates, the summary of new gaming revenue to the Commonwealth would appear as follows:

	<b>Bushkill</b>	<b>Gettysburg*</b>	<b>Woodlands</b>	<b>Holiday Inn</b>
Total Gaming Revenue	\$107,658,228	\$93,520,000	\$66,808,661	\$75,796,026
Cannibalization	\$11,842,405	\$23,380,000	\$1,852,389	\$37,048,874
Rate	11%	25%	2.7%	48.8%
Net New Revenue	\$95,815,823	\$70,140,000	\$64,956,272	\$38,747,152

\* As Gettysburg did not provide a cannibalization number, the amount projected by their operator has been used.

Notably, neither Sands Bethworks nor Mohegan Sun projected a cannibalization rate for Bushkill, but only showed maps and claimed non-quantified harm. But, if Mohegan Sun's and Sands' arguments are to be believed, Bushkill also has the benefit of spreading its cannibalization, if any, amongst three casinos, minimizing the negative impact to each while still producing the most new revenue of all Applicants.

Mohegan Sun and Sands are both located in the densely populated, non-resort destination markets of Wilkes-Barre/Scranton and Allentown/Bethlehem/Easton respectively. They derive most of their play from locals. This is not the market that Bushkill will draw gamers from nor is it the type of market intended by the Category 3 legislation.

This is a difficult topic, as no one really knows what the impact will be on existing casinos. However, there are a couple of common sense ways to look at the issue. First, will many dedicated day-trip or local play gamers really travel to a Category 3 over a Category 1 or Category 2 casino for the privilege of paying to use an amenity in order to play at a limited number of machines and tables? A patron looking only to game wants choices that a Category 3 cannot provide.

The second common sense argument is to look at where a Category 3 will provide the least risk if the impacts are greater than any of the experts have projected? Is there lower risk in a market of 4.7 million people or one with 28.2 million people? Clearly, the safest way to mitigate the risk and achieve maximum revenue is to place the Category 3 license at the resort next to the area with the biggest market to share. The NY/NJ DMA is so large that there are more than enough potential gamers. This is clearly not the case in any other market in the Commonwealth.

Bushkill also predicts that a casino at Fernwood would actually help Mt. Airy Casino Resort ("Mt. Airy"). By making the Pocono region more of a known gaming destination, more people will be attracted to the area to game. Why does Burger King put their restaurants next to McDonald's? The cluster effect, as it is known, needs two elements – choices and people. The population numbers are clear, twice that of Penn Harris Gaming, LP ("Holiday Inn") and Gettysburg and six times that of Woodlands within 100 miles. All that is needed is choice, which a casino at Fernwood would provide.

**D. Bushkill will provide the maximum enhancement to tourism.**

Bushkill is a resort operator and timeshare company and will remain such if awarded the license. What the casino will add, and what Bushkill has consistently testified to since it first applied in 2007, is new visitors. One of the requirements of the Pennsylvania Race Horse Development and Gaming Act (the "Act") is "to promote tourism."<sup>4</sup> With a casino amenity, Bushkill can deliver. New guests means more overnight stays, improved sales, and higher restaurant and amenities usage – exactly the type of revenue enhancement encouraged by the Act and a benefit to the surrounding community of businesses who rely on Bushkill guests for their own success.

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<sup>4</sup> 4 Pa. C.S. §1102(6).



Both Fernwood and Woodlands are well-established resorts run by long-term owners and operators. The other Applicants are formed by investors looking for a place to put a casino. Both Gettysburg and Holiday Inn hold options on their property, both have potentially fatal municipal issues, both require the casino for the properties to be successful, and both have chosen properties with a bare minimum of amenities.<sup>5</sup> Gettysburg is willing to remove its one true amenity to locate a casino.<sup>6</sup> It is a conundrum how either hotel will find sufficient amenities to serve their guests without stretching the de minimus requirement far beyond the original intent of the law. Neither is a well-established resort offering year-round amenities. They are proposing to build mini Category 2 casinos and are willing to offer fictional volleyball memberships or lake memberships to accommodate gamers.

There is another major difference between Bushkill and Woodlands. While both are well-established resorts, Bushkill has 906 keys, almost three times as many as Woodlands. And the majority of Bushkill's keys are in two and three-bedroom villas, providing an enormous sleeping capacity of 4,554 guests per night. If the intent of the Act is to promote tourism and play by overnight guests, there is no comparison between Bushkill and any other Applicant, or any other casino in the nation outside of Las Vegas. **Bushkill can do what no other Applicant can – accommodate nine times more overnight guests than slot machines.**

**E. Bushkill will provide the greatest protection to the Horsemen.**

It is clear by reading the Act, and by listening to the concerns expressed by the Board during the recent hearings, that protecting the well-being of the Pennsylvania Horsemen is of the utmost importance.

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<sup>5</sup> See testimony of David LeVan, Mason-Dixon Resorts, L.P., November 16, 2010 Board Hearing Transcript ("Gettysburg's Transcript"), pgs. 167-168.

<sup>6</sup> Gettysburg's Transcript, pgs. 128 and 149.

Awarding the Category 3 license to the Applicant that will generate the most revenue assures maximum tax dollars back to the Commonwealth, thereby protecting and enhancing distributions to the Horsemen. Exhibit "B", attached hereto, sets out the revenue projections of each of the Applicants and the calculated contributions to the Horsemen using a sample week of actual statewide Gross Terminal Revenue ("GTR") results from all existing casinos as a basis for calculation.<sup>7</sup> To remedy the various experts' projections of inexplicably low or high cannibalization rates, the chart assumes a fixed cannibalization rate of 15% of GTR for each Applicant drawn from the nearest existing casinos in their respective markets.

The data provides the following indications regarding benefit to the Horsemen:

1. The PARHDF benefits from the addition of a Category 3 casino in all cases.
2. The amount added to distributions to the PARHDF are slightly diminished when a Category 3 draws business from a Category 1 rather than a Category 2 facility.
3. Because of Bushkill's superior room count, projected GTR and being the only Applicant without a Category 1 facility as its nearest Pennsylvania casino, Bushkill is the Applicant that will provide the most positive impact for the Horsemen.

Over the course of a year, Bushkill would improve the PARHDF by approximately \$3.4 million compared to \$2.9 million for Gettysburg, \$2.4 million for Holiday Inn, and only \$2.3 million for Woodlands.

## **II. ARGUMENT**

### **A. Bushkill will generate the greatest amount of new gaming revenue.**

As evidenced by the Board's questions at the hearing, a Category 3 License should be awarded to the Applicant who demonstrates that it is the most likely to generate the greatest

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<sup>7</sup> Bushkill utilized GTR figures as found on the Board's website.

amount of new gaming revenue for the Commonwealth. Based on this criteria alone, Bushkill should be awarded the license.

As Andrew Worthington, President and Chief Executive Officer of Bushkill, stated in his testimony, to create the most revenue, you have to "put the machines where the people are."<sup>8</sup> That location is unquestionably Bushkill. Penn National, whose projections have been proven to be 99% accurate in this Commonwealth, project that Bushkill would realize stabilized gross gaming revenues of over \$107 million. Aside from the macroeconomic benefits that the people of Pennsylvania would experience as a result of Bushkill's revenue generation, the Commonwealth's tax base would directly benefit by way of receiving over \$46 million in new taxes during a stable year. This is in addition to the over \$4 million that Bushkill would contribute in new county and municipal taxes.<sup>9</sup> Bushkill currently contributes over \$5.4 million in state and local taxes.

Mr. Worthington's proposed strategy, to put the machines where the people are, is supported by Penn National's revenue projections. With the vast population base within 100 miles of Bushkill's property, the potential for such large gaming revenues is not only possible, but probable. Residents of the New York DMA over-index in terms of their propensity to game.<sup>10</sup> This means that a typical resident of the New York DMA is more likely to indulge in gaming activities than residents of the typical DMA. The Commonwealth can capitalize on this propensity to game by authorizing a gaming facility at Bushkill, the area with the least amount of saturation.

For the 100-mile radius surrounding Bushkill, there are only 12.3 slot machines for every 10,000 adults. This slot machine density is the lowest of all of the Category 3

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<sup>8</sup> Bushkill's Transcript, pg. 65.

<sup>9</sup> Bushkill's PowerPoint Presentation, Board Hearing, November 16, 2010.

<sup>10</sup> Bushkill's Transcript, pgs. 46-47.

Applicants with Woodlands being 381% greater.<sup>11</sup> These density figures are extremely significant as they demonstrate that Bushkill is least likely to pull patrons from other facilities and that the largest revenue stream will be realized by awarding the license to Bushkill.

**B. Penn National is accurate in their projections.**

During the hearings, questions arose regarding Penn National's projections for Bushkill's facility, particularly concerning the slot machine win per position of \$513 in a stable year. When asked by Commissioner Angeli how Bushkill would realize this win per position figure, Steve Snyder testified that Penn National is comfortable with the projections because of the large number of hotel rooms offered by Bushkill and the population base.<sup>12</sup> Importantly, Penn National is so confident of its projections that it is willing to provide the funding for the project and get paid its management fee based on that revenue. In other words, they are putting their money where their mouth is.

Further, Mr. Snyder's response accurately summarizes the reason why Bushkill would be able to meet its projections; as previously noted, it offers 906 guest-rooms on its property, and demonstrates how it plans to generate a significant portion of its gaming revenue from overnight guests. As compared to the other Applicants, Bushkill has nearly three times more guest-rooms than the next closest Applicant, Woodlands, which has only 322 guest-rooms.

During an unrelated question from the Board, James Perry, from Isle of Capri Casinos, Inc. ("Isle of Capri"), stated that in his thirty years of experience that he does not remember a slot win per unit of over \$500. Mr. Perry should have become more familiar with the application of Woodlands to which he was a part. Had he done a review, he would have realized that numerous capacity constrained facilities have achieved such slot win per day. Exhibit "C" to Nemaacolin's Notice of Intent to Present Comparative Evidence against

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<sup>11</sup> Id., pgs. 38-39.

<sup>12</sup> Id., pgs. 33-34.

Bushkill's application includes "The Gaming Industry Observer's Midwest Slot Report" from 2010 showing casinos with wins over \$500 per unit. In addition, a review of a sampling of slot wins per day from 2005 to 2010, attached hereto as Exhibit "C", shows facilities in Nevada, Illinois and Ontario obtaining such wins. This point further validates Penn National's argument that a \$513 slot win per position for a smaller capacity constrained casino, such as Bushkill, is not only feasible, but probable.

Further questions were raised regarding the feasibility of Penn National's slots win per position projections as compared to the actual performance of Mt. Airy. Bushkill contends that Mt. Airy's actual slots wins per position figures are not indicative of Bushkill's ability and likelihood to meet its own projections. Very simply stated, Mt. Airy is a completely different type of facility than that which Bushkill proposes to open. Mt. Airy is a Category 2 facility, as such, it maintains over 2,400 slot machines. Additionally, Mt. Airy maintains a hotel with only 188 guest-rooms and unlike Fernwood has not been in continuous operation for over 80 years.

First, the number of machines that Mt. Airy maintains demonstrates why a comparison to Bushkill is unfounded. Based on its current revenue levels, if Mt. Airy were to reduce the number of slot machines that it maintains to 500, its win per unit per day would be approximately \$850. This illustrates the point that Mt. Airy's actual performance should not be used to question the accuracy of Bushkill's projections because Mt. Airy could feasibly boast significantly higher slot machine win per unit numbers if it reduced the number of machines that it offered its customers.<sup>13</sup> This is not to say that Bushkill is suggesting that Mt. Airy do so,

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<sup>13</sup> Additionally, Bushkill asserts that the addition of a gaming facility at Fernwood would drive overall tourism to the region and attract even more gamers to the area. By attracting new tourists to the area, other gaming facilities would actually benefit from a gaming facility at Bushkill.

but rather to demonstrate that a comparison to Mt. Airy is not helpful in analyzing Penn National's projections for Bushkill.

**C. Bushkill will generate greater levels of new gaming revenue than Woodlands.**

As noted above, during its presentation Woodlands' representatives questioned the accuracy of Bushkill's projections and argued that it would be able to achieve higher revenue levels than Bushkill. Their logic is flawed and their conclusion is inaccurate.

When assessing the projected gross revenue of each Applicant, Bushkill would like to draw the Board's attention to the fact that it based its comparative statements regarding all other Applicants entirely on the revenue projections submitted by each Applicant. Bushkill accepted each Applicant's projections on the assumption that they reflected the most educated estimation each could make. Bushkill did not pay a consultant to re-engineer and reduce any of the revenue projections of the competing Applicants in order to improve the comparative landscape for itself.

Nevertheless, assuming that each consultant had the best interests of their respective clients at heart, and recognizing Penn National's motivation through capital risk to be as accurate and realistic as possible, Bushkill's projected revenue remains the least speculative and highest amongst the Applicants.

When reviewing the only other Applicant that compares favorably with Bushkill as a well-established resort, Woodlands has been forced to penetrate a 200-mile market to provide revenue projections that support their proposed project. Bushkill did not elect to extend its market reach to this degree as it considers a 200-mile market to be highly unrealistic, impractical and, more importantly, unnecessary to support its projections. If in fact Bushkill had used such an excessive market reach, it would be drawing on a population of 48.2 million compared to Woodlands' 21.3 million. The over-reaching involved in a market

of this size is amplified by Woodlands' hope that 79% of its visitation will be from day visitors rather than overnight guests.<sup>14</sup>

Again, Bushkill holds Woodlands' expectation for 79% of its gaming revenue to come from a 200-mile market penetration to be completely unrealistic. When using a more practical 100-mile market and layering in the most recent data from the Board's website on slot machine availability in the state, it is clear that the population in the market surrounding Bushkill has access to fewer slot machines per 10,000 adults than the population surrounding any of the other Applicants. As shown previously in the tables on pages 5 and 6, the most under-served market is not necessarily the market in which casinos are fewer in number or further apart, but the one in which the fewest machines exist in relation to the size of the adult population within practical reach. That location is Fernwood.

Furthermore, as provided in the table on page 7, even if accepting each Applicant's estimation of its draw from any neighboring casinos (cannibalization), Bushkill still provides the most net or new gaming revenue to the Commonwealth. In short, Bushkill believes that any endeavor by the Board to meet this essential goal of maximizing net revenue would be best served by simply putting the machines where the people are.

With respect to its financial stability, Bushkill operates profitably as evidenced by the financial records and tax returns provided to the Board. In contrast, Woodlands has not been profitable for the past five years as pointed out by Commissioner Trujillo.<sup>15</sup> In response to the concerns suggested by Commissioner Trujillo's questions, Woodlands contended that its poor performance is attributed to the downturn in the economy, more specifically the downturn of the tourism industry.<sup>16</sup>

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<sup>14</sup> Woodlands' Transcript, pgs. 80-81.

<sup>15</sup> *Id.*, pgs. 80-81.

<sup>16</sup> *Id.*, pgs. 112-113.

Bushkill first would like to point out that during the same time period, even as the economy was in a recessionary state, it was able to remain profitable. Bushkill's performance through difficult economic times is indicative of its future ability to generate strong and consistent revenue figures. To the contrary, Woodlands' struggle demonstrates that it lacks the financial stability to be awarded a license.

Moreover, as the hearing testimony reveals, Woodlands' is financially intertwined with 84 Lumber as the two entities share common ownership.<sup>17</sup> 84 Lumber has been particularly hard hit by the downturn in the housing market. As a recent article in the Pittsburgh Post-Gazette points out, it "has been the worst of times" for 84 Lumber.<sup>18</sup> In the very same article, Margaret Hardy Magerko, President of both Woodlands and 84 Lumber, stated that 84 Lumber has "sustained significant cash losses."<sup>19</sup> The financial difficulties currently facing 84 Lumber are at issue, as 84 Lumber and Nemacolin are both owned by a common Trust. The Trust loans money to 84 Lumber and Nemacolin.<sup>20</sup> More importantly, in the event that 84 Lumber were to declare bankruptcy, the Trust could become responsible for the debt of 84 Lumber. In what Mr. King referred to as the "doomsday" scenario, if the Trust were unable to satisfy 84 Lumber's creditors, Nemacolin resort would become responsible for at least part of the Trust's obligation.<sup>21</sup> Given Nemacolin's recent poor economic performance, it is likely that the resort would be left unable to satisfy the debts of the Trust and become insolvent.

As explained in Woodland's presentation to the Board, Isle of Capri would have no ownership interest in, or control over the Nemacolin resort, rather its entire interest in the project would be tied to the operation of the gaming facility.<sup>22</sup> As Mr. King further suggests,

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<sup>17</sup> *Id.*, pgs. 119-122.

<sup>18</sup> "Splintering 84 Lumber navigates rough seas", Tim Grant, Pittsburgh Post-Gazette, October 22, 2010, attached hereto as Exhibit "D".

<sup>19</sup> *Id.*

<sup>20</sup> Woodlands' Transcript, pg. 120.

<sup>21</sup> *Id.*, pgs. 121-122.

<sup>22</sup> *Id.*, pg. 112.



Isle of Capri might nevertheless have to step in, and either buy the resort or service the debt of Nemacolin/84 Lumber.<sup>23</sup> This might not be possible given Isle of Capri's current cash position and its corporate goals. If this scenario were to play out as described herein, Isle of Capri would likely be left unable to or disinclined to save the resort. Additionally, it should be noted that there is no evidence of any agreement between Woodlands and Isle of Capri that would force Isle of Capri to buy Nemacolin in the event of insolvency. If this were to occur, Nemacolin resort would close, leaving an ineligible Category 3 facility as it would have no rooms.

Bushkill's position is simply that, to the extent all other goals and intents of the Act are not harmed, there is every reason to select the Applicant that provides the most revenue to the Commonwealth.

**D. Bushkill will provide the greatest enhancement to tourism.**

As set forth in Section 1102 of the Act, "the authorization of limited gaming is intended to enhance the further development of the tourism market throughout the Commonwealth, including, but not limited to year-round recreational and tourism locations...". Bushkill has clearly demonstrated that it has the greatest potential to enhance tourism in the Commonwealth, since it currently attracts far more guests than any other Applicant, is located in a market that currently attracts the most regional tourists, and that has the capacity to attract the most new tourists if awarded a license. The addition of a casino at Fernwood would allow the resort to reach an even higher level of tourism creation. In plain English, Fernwood is the only Applicant with a resort already located in a true destination area.

The Applicant best placed to increase tourism to and for the Commonwealth is the Applicant with:

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<sup>23</sup> Id., pgs 121-122.

- i) the greatest capacity to accommodate additional guests;
- ii) the closest proximity to the largest tourism feeder market;
- iii) a location within the most established and robust tourism area; and,
- iv) proven historic visitation.

Taken from the testimony of each of the four Applicants, the following table indicates the guest capacity of each Applicant through room count, the stated current occupancy rate and the projected growth in occupancy due to the addition of a casino. Bushkill has applied an identical total tourism revenue per incremental room night for Gettysburg, the Holiday Inn and itself. A significantly higher revenue number has been applied to Woodlands based on its higher average nightly room rate.

**Incremental Tourism Revenue**

	<u>Fernwood</u>	<u>Gettysburg</u>	<u>Woodlands</u>	<u>Holiday Inn</u>
Current Number of Rooms	906	308	322	239
Current Occupancy %	36.5%	34.0%	62.0%	70.0% on 239 Rooms
Stable Year Occupancy %	75.3%	74.0%	85.0%	85.0%
Increase in Occupancy	38.8%	40.0%	23.0%	15.0% on 275 Rooms
Incremental Room Nights	128,308	44,968	27,032	24,255
Revenue Per Incremental Room Night	185	185	485	185
Incremental Tourism Revenue	23,736,980	8,319,080	13,110,520	4,487,175

One can see that due to the sheer size and unmatched capacity of Fernwood, its projected occupancy growth will produce approximately \$23.7 million in increased tourism revenue compared to \$13.1 million for Woodlands, \$8.3 million for Gettysburg and \$4.4 million for the Holiday Inn. Viewed another way, Bushkill's increased room nights alone are greater than the total room nights (both current and projected) of Woodlands.

During his November 17, 2010 testimony, James Perry of Isle of Capri suggested that the occupancy rate of Woodlands' guest-rooms would increase by 20% if it were awarded a

license.<sup>24</sup> According to further testimony provided at the hearing, Woodlands currently offers 322 guest-rooms.<sup>25</sup> Therefore, assuming Woodlands were to achieve its expected level of occupancy, Woodlands would add just over 60 occupied rooms per night, a minimal increase in tourism.

By contrast, if Bushkill achieved the same level of increase to occupancy, it would generate an additional 180 occupied rooms per night, three times that of Woodlands. Bushkill projects that its actual room occupancy will be 75%, generating an additional 351 occupied rooms per night, six times that of Woodlands.

Bushkill would also like to emphasize that it has not broken its accommodations down into individual sleeping rooms to obtain its count. Bushkill's 906 keys represent separate rentable accommodations ranging from standard hotel rooms accommodating two to four people, to two, three and four bedroom luxury villas accommodating from six to 12 people in each case. For example, each of Bushkill's three-bedroom villas accommodate up to ten people, and are treated as one key in its 906 room count. It is this unique characteristic of Bushkill that provides a 4,500+ overnight guest capacity that is simply unattainable by any of the other Applicants. In addition, Bushkill's already permitted future development for an additional 292 two-bedroom villas provides shovel-ready capacity for over 1,700 more overnight guests.

For day guest visitation, the first measure of potential is the size of the market within reasonable driving distances/time. In such a market, the key to growth for any resort lies in a significant array of attractions and amenities to both draw and keep a day visitor on property. Without meaningful amenities, the Gettysburg and the Holiday Inn do not offer true competition in this area. Despite Woodlands' repeated contentions that it is the only

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<sup>24</sup> *Id.*, pgs. 175-176.

<sup>25</sup> *Id.*, pg. 158.

Applicant with any amenities, Bushkill's 35 plus on-site amenities and activities compare favorably to those at Woodlands. There are certainly differences between the two, and while Bushkill does not offer an off-road vehicle driving course, Woodlands does not offer eight indoor and outdoor pools. This comparison, more than any other, is entirely subjective and what matters most is that the range of choice is sufficient to attract diverse tourists in significant number, while providing them with a choice of amenities for use prior to entering the casino.

Bushkill has long offered its guests extensive amenity options to enjoy when visiting the resort and will continue to do so. Their existing options serve to differentiate them from the other Applicants, particularly Gettysburg. As Gettysburg's architect Donald Dissinger testified, the Allstar complex will be converted into a casino if Gettysburg is awarded the license.<sup>26</sup> Removal of this singular amenity raises the question of Gettysburg's eligibility for a Category 3 License. By voluntarily eliminating Gettysburg's one true amenity, Mr. LeVan is essentially affirming to the Board that he still desires to open a "convenience" casino.

As to Holiday Inn, their lack of rooms alone disqualifies them from consideration. Much was made by them that the RVs were buildings under the Act.<sup>27</sup> They also claimed, however, that they possessed titles for all of the RVs.<sup>28</sup> They cannot claim that RVs are buildings to one government agency and motor vehicles to another. These "buildings" have axles and tow bars, are regulated by PennDOT, and are not permanent resort hotel structures.

Throughout the hearings, the Board, through its questions, consistently emphasized the importance of providing safe entertainment options for children who accompany their

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<sup>26</sup> Gettysburg's Transcript, pgs. 128 and 149.

<sup>27</sup> Penn Harris Gaming, LP, November 17, 2010 Board Hearing Transcript ("Penn Harris Transcript"), pgs. 126-128 and 203.

<sup>28</sup> *Id.*, pg. 150.

parents to a Category 3 resort. Bushkill offers a kids club designed and maintained exclusively for young visitors to the resort. This facility provides safe and fun options to the young visitors away from the proposed gaming facility.

Destination tourism by definition involves some degree of excursion from one's immediate surroundings to another location providing recreation. Bushkill is as close as a destination resort can be to the largest market in the country, and still be an "out of market" destination. Only minutes from the New Jersey border and less than 90 miles from Manhattan, the day visit tourism market available to Bushkill is unparalleled among the other Applicants.

A significant boost in any resort's efforts to attract day tourism to its facilities can be found in the strength of existing tourism in the surrounding area. The Poconos currently host 23.8 million visitors annually, of which 8.5 million are overnight guests. In addition to enticing new day-visitors out of their homes and to the resort, the size of the established surrounding tourism market offers day visitors that are already in the area with fun and recreation.

### **III. OTHER CONSIDERATIONS**

As Bushkill provides the highest revenue to the Commonwealth, the greatest potential to enhance tourism and provides the most benefit to the Horsemen, there are a limited number of additional matters requiring follow-up from its hearing.

**A. Final Opportunity** – It is important to Bushkill for the Board to consider that this is Bushkill's final opportunity to receive a Category 3 License. The Amended Act provides for a new license in 2017, but the distance requirement has been increased to 30 linear miles, making Bushkill ineligible for that license. This is not Gettysburg's or Woodlands' final chance. Bushkill suggests that it would be in the best interest of the Commonwealth to not award the current license to Woodlands or Gettysburg, and instead reevaluate their

candidacy in 2017, if they choose to reapply. By 2017, the Nemacolin/84 Lumber financial difficulties will be more fully understood and Gettysburg will have had the opportunity to address their water and sewer issues, acquire necessary property, receive an approved land development plan, and deal with the condominium association.<sup>29</sup>

**B. Resort Casino v. Convenience Casino** – Contrary to assertions by Woodlands that it is the only resort operator who is planning to add a casino to its other amenities, rather than build the equivalent of a small stand alone facility, Bushkill points to the following: 1) Jeff Nobers, spokesperson for Woodlands, said "...the financing for the prospective casino is being handled by the Isle of Capri Casinos, and Woodlands is basically providing the location for that firm's casino at the resort's Wildside building that houses an arcade and bowling alley",<sup>30</sup> 2) Isle of Capri's "Lady Luck" Casino at Woodlands, is to be located some 8-tenths of a mile from the main resort conveniently on Rt. 40, as opposed to Fernwood's proposed facility located just 50 feet from the resort's main lobby and check-in area, and attached to its main hotel building; and, 3) Casino workers at the Lady Luck will be employed by the casino operator, Isle of Capri, and not the resort. Casino workers at Fernwood will be employees of Bushkill, not of the casino manager.

**C. Potential for Delay** – Unlike Bushkill, both Woodlands and Holiday Inn face potential appeals and long delays. Washington Trotting Association, Inc. was granted intervener status by the Board against Woodlands. Likewise, Penn National was granted intervener status against Holiday Inn. As can be seen by the appeal to the Valley Forge licensing decision, if Woodlands or Holiday Inn were awarded a license, the completion of their casino could be significantly delayed, if not prevented altogether, as a result of appeals

<sup>29</sup> Gettysburg's Transcript, pgs. 25, 167-168 and 176.

<sup>30</sup> "Washington County backs \$5 million loan to 84 Lumber Co.", Joes Napsha, Pittsburgh Tribune-Review, October 8, 2010, attached hereto as Exhibit "E".

brought by Pennsylvania licensees that have standing. Bushkill's proposed plans, unlike these Applicants, will not be plagued by such court proceedings as no existing licensee felt strongly enough to seek intervener status against Bushkill.

Further, unlike other Applicants, Bushkill has the support of its community, and consequently will not be burdened by lengthy delays by objectors trying to obtain standing to bring a challenge. Gettysburg, if awarded a license, will undoubtedly face opposition from members of its community who seek to prevent a casino from being built in such close proximity to one of the most significant historical sites in our nation.<sup>31</sup> While Bushkill understands that these local objectors will have a difficult time obtaining standing to bring a cause of action against Gettysburg on a claim against the award of the license, Bushkill contends that the objectors, nevertheless, have the ability to substantially delay the Gettysburg project.

The Board need look no further than to the events that have transpired in relation to the Philadelphia casino projects to see the potential long delays that vocal community members are able to cause. Gettysburg's admitted issues with water and sewer, lack of a land development plan, absence of a Highway Occupancy Permit, and their need to acquire additional property allow for lawsuits and delays on the municipal level and through the court system.<sup>32</sup> As Solicitor Wise's testimony demonstrates, both the residents and local government officials of Bushkill's surrounding area welcome a casino at Bushkill with open arms, and it is "permit ready" and "shovel ready".<sup>33</sup>

**D. Understanding of Category 3 License Restraints** – Gettysburg and Holiday Inn will have difficulty meeting the "patron of the amenities" requirement. Neither has the room

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<sup>31</sup> Mason-Dixon Resorts, L.P. August 31, 2010 Public Input Hearing Transcript.

<sup>32</sup> Gettysburg's Transcript, pgs. 25, 167-168.

<sup>33</sup> Bushkill's Transcript, pg. 55.

count necessary to support strong play. More damaging is that unlike Bushkill or Woodlands, neither Holiday Inn nor Gettysburg has any real amenities. This will prevent guests in sufficient numbers from being able to meet the amenity requirement and use the casino, making it impossible for either to meet their projections. If there are no amenities to use, very few guests will get into the casino.

Woodlands admits it has an appetite for finding ways around this basic requirement of the Act. As prior statements by Woodlands' spokesperson, Jeff Nobers, indicate they are contemplating allowing gamers to access the casino on the "promise" that they will use an amenity afterwards. "But in what chronological order does a patron have to use the facilities?" asked Mr. Nobers.<sup>34</sup> Mr. Nobers then stated that, in his opinion, "It really shouldn't matter in what order a patron uses our amenities."<sup>35</sup>

Bushkill has no concerns with this issue. It has significant amenities, the most rooms, and, unlike Woodlands, its potential patrons are located a short drive away, making it reasonable for them to really use an amenity prior to entering the casino.

**E. Diversity** - Bushkill's host county, Monroe, is made up of a 28.7% minority population, the second highest in the Commonwealth behind only Philadelphia. The percentage of minority population for Adams, Cumberland and Fayette Counties are 10.1%, 9.3% and 6.0% respectively. Bushkill's current workforce consists of 37.8% minority employees. Bushkill currently provides the most opportunities for diversity hiring and, after award of the casino license, will have the greatest ability to continue its practice of significant minority hiring.

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<sup>34</sup> "Nemacolin must resolve issues to launch casino", Tom Barnes, Pittsburgh Post-Gazette, November 12, 2006.

<sup>35</sup> Id.



**F. Amenities** - In its presentation to the Board, Woodlands represented that Bushkill would be eliminating its meeting and convention space in order to construct the casino.<sup>36</sup> This is inaccurate and misleading. Fernwood currently has over 62,000 square feet of meeting space, only 24,000 of which will be consumed by the new construction. The remaining 38,000 square feet of meeting, convention and banquet space is still greater than Nemacolin's 31,000 square feet and will permit Fernwood to continue with its current group sales and convention activities. In fact, Bushkill expects this aspect of its business to receive a significant lift from the addition of a casino amenity at the resort.

**G. Traffic** - The Board heard from Middle Smithfield Township officials that the existing road system, resort entrances and traffic lights are all in compliance and currently handle the large volume of resort guests and special event attendees.<sup>37</sup> Bushkill has committed to the Board that it will comply with any additional requests the local municipality or PennDOT may have.

**H. Jobs** - Creation of new jobs in the Commonwealth is clearly a crucial criteria that a successful candidate for a Category 3 License must satisfy if it hopes to receive a license.<sup>38</sup> Bushkill has demonstrated that it should be awarded a license based on its ability to generate new jobs in its region. Bushkill's proposed project will generate over 900 living wage jobs, most of which are intended to be held by residents of the Pocono Mountain region. Bushkill's hiring policies reflect its commitment to hire locally and reward those employees with a generous benefits package. Bushkill currently provides competitive living wages, 100% company paid individual health insurance, paid vacation and sick time, and offers a company matched 401k. Unfortunately, Woodlands has simply not demonstrated a strong commitment

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<sup>36</sup> Woodlands' Transcript, pg. 84.

<sup>37</sup> Bushkill's Transcript, pg. 59-61.

<sup>38</sup> 4 Pa.C.S. § 1102; 58 Pa.Code § 441a.7(g)(8).

to generating jobs in its region. Woodlands provided a video with individuals saying they support the gaming facility since the area surrounding Woodlands was experiencing difficult financial times. Despite such plans, Woodlands' previous behavior suggests that the Board should view their hiring plans with great skepticism. The Pittsburgh Tribune-Review recently ran an article explaining Woodlands' hiring of foreign workers.<sup>39</sup> In the article, Ms. Crawford points out that Woodlands, as of September 2010, employed 70 foreign workers.<sup>40</sup>

Testimony from Woodlands indicates that they plan to recruit 80% of their proposed 600 new employees for the casino and resort from the local area, 90% in total from the Commonwealth, and presumable 10% from out of state/country.<sup>41</sup> Woodlands may understand the importance of assuring the Board of these intentions, but does not have a workable plan for its recruitment needs. As testified to by Nemacolin's Director of Human Resources, Stephanie Miller, Nemacolin historically and currently hires employees under the H2B Immigrant Workers Program.<sup>42</sup> In order to have received its certification for participation in this program, Nemacolin was required to stipulate to the United States Department of Labor that it is unable to fill all its existing operating jobs using domestic/local labor. No explanation has been presented of how the two conditions of Nemacolin previously having no choice but to hire workers from overseas just to operate the resort as it exists today (assuming its stipulation to the Federal Government was factual) and their testimony that they will hire some 480 workers from the surrounding area where jobs are in need, can co-exist.

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<sup>39</sup> "Nemacolin relies on foreign guest workers", Amy Crawford, Pittsburgh Tribune-Review, October 3, 2010, attached hereto as Exhibit "F".

<sup>40</sup> Id.

<sup>41</sup> Woodlands' Transcript, pgs. 42-43.

<sup>42</sup> Id., pg. 94.

#### **IV. CONCLUSION**

In making its decision, Bushkill asks the Board to consider the following:

##### **Why not the Holiday Inn?**

- It does not meet the eligibility criteria with respect to hotel rooms.
- It is not a well-established resort hotel.
- It will cause the highest rate of cannibalization among the Applicants.
- It will cause greater cannibalization from a Category 1 facility and reduce the benefit to the Horsemen and the Commonwealth.
- It will not produce the most gaming revenue for the Commonwealth.
- It will not generate the greatest incremental tourism for the Commonwealth.
- It will attract a challenge by a party with standing, thus incurring legal delays.

##### **Why not Gettysburg?**

- It is not a well-established resort hotel.
- It will cause the second highest rate of cannibalization among the Applicants.
- It will cause greater cannibalization from a Category 1 facility and reduce the benefit to the Horsemen and the Commonwealth.
- It will not produce the most gaming revenue for the Commonwealth.
- It will not generate the greatest incremental tourism for the Commonwealth.
- It will continue to attract massive opposition from parties who seek to block or delay the project in the municipal, planning, zoning and environmental arenas.

##### **Why not Woodlands?**

- It would generate the least gaming revenue for the Commonwealth.
- It will not generate the greatest incremental tourism for the Commonwealth.
- It will provide the least benefit to the Horsemen.

- Its projected reach for day-gamers from a 200-mile market is unattainable.
- It will fail to employ sufficient casino workers locally.
- Its financial stability is questionable.
- It will attract a challenge by a party with standing, thus incurring legal delays.

### Why Bushkill?

- It meets all eligibility and suitability criteria under the Act.
- It has the most rooms of any Applicant.
- It has the most population in a 100 mile radius.
- It has the fewest machines per 10,000 adult population.
- It will produce the most gaming revenue for the Commonwealth.
- It will generate the greatest incremental tourism for the Commonwealth.
- It will provide the greatest benefit to the Horsemen.
- Penn National is a proven manager and stable financier.

Based on the above, Bushkill respectfully requests that the Board grant Bushkill the Category 3 License.

Respectfully submitted,

By: 

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Dated: November 29, 2010

## CERTIFICATE OF SERVICE

A true and correct copy of Bushkill Group Inc.'s Memorandum in Support of Its Application for a Category 3 License was sent to the following persons via e-mail and federal express on November 29, 2010:

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The information contained in this Certificate of Service is true and correct.

  
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Date: November 29, 2010

## EXHIBIT "A"

### **Bushkill will produce the highest revenue of all Applicants.**

With \$107 million in stable year revenue as projected by Penn National, and the greatest population within 100 miles (28.2 million) in the NY/NJ market from which Bushkill already draws its customers, Bushkill is poised to attract the most gamers and, importantly, the most new revenue. By comparison, consultants for all the other Applicants have projected lower gaming revenues with \$93.5 million for Gettysburg, \$66.8 million for Woodlands and \$75.8 million for the Holiday Inn. Penn National produced the revenue numbers for Bushkill, and they have proven to be 99% accurate in their projections to the Commonwealth.

### **Bushkill will produce the highest tax revenue for the Commonwealth of all Applicants.**

Setting aside any manipulation by experts with each Applicant's projections, Bushkill produces the most revenue and will deliver \$50.6 million in taxes each stable year, far greater than Holiday Inn at \$40.8 million and Gettysburg at \$36.8 million and Woodlands at \$32.5 million

### **Bushkill is in the market with the highest population of all Applicants.**

There is no other market in Pennsylvania with 28.2 million people a short drive away. Holiday Inn and Gettysburg will draw from a population about one half as large as Bushkill. Woodlands will draw from a population only one sixth as large and, even if their 200 mile draw is to be believed, will still have a market area with seven million fewer people than in Bushkill's more realistic 100 mile radius. To achieve the greatest win, a facility must attract the most players. With the constraints on machine numbers and amenity use, Bushkill will best be able to attract overnight guests and day trippers who, after just a short drive, can use an amenity and enter the casino. Bushkill currently attracts day trippers from the NY/NJ area for golf. These individuals, rather than wait hours for a tee time at their local course, see the advantage of a short drive to the Pocono Mountains for their golf outings. Adding a casino will significantly increase this play as well as usage of the many other Bushkill amenities.

### **Bushkill is in the least saturated market of any Applicant based on the mathematical measurement of machine ratio per adult population in reachable market.**

Bushkill's ratio of 12.3 machines per 10,000 adults in a 100-mile radius is the lowest of all Applicants. Woodlands is the largest at 46.8, with almost four times as many machines per 10,000 adults in its market as Bushkill. This is a direct result of Nemacolin's remote location and sparse population. Even Woodlands' expert, Dr. Mumphrey, spoke to the importance of player population in his testimony when he stated: "Simplistically speaking, the larger the gaming age populations and casinos, the greater the number of admissions."

### **Bushkill has the greatest amount of overnight accommodation.**

With 906 rooms, Bushkill can sleep over 4,500 patrons per night. No other Applicant can come close to this amount, meaning Bushkill provides the greatest opportunity to capture play from overnight guests and generate significant additional tourism for the region. Bushkill estimates that no other Applicant can provide sleeping accommodations for even one quarter as many patrons as Bushkill. Bushkill can do what the Act asks of Category 3 licensees; promote play from guests of the resort. ***Bushkill has nine times more sleeping accommodations than slot machines.***

**Bushkill will produce the least cannibalization using any reasonable measure.**

Obviously, experts paid to promote their client's application dispute this point, but the fact remains that the degree of cannibalization in any market is first determined by the level of demand versus supply. Until a market approaches saturation, cannibalization remains very limited. Again, due to Bushkill's market being the least saturated of all the Applicants, Bushkill is likely to create the least amount of cannibalization.

**Bushkill will provide the most benefit to the Horsemen.**

This result is a function of having the most play and producing the most revenue. Through superior population counts, far superior room counts and multiple amenities, Bushkill will produce the most new revenue and return the most to the Horsemen. Bushkill has the added advantage of not being located closest to a Category 1 licensee, as opposed to all of the other Applicants, further assisting the Horsemen.

**Bushkill will provide the greatest enhancement of tourism to the Commonwealth.**

Bushkill is located in the premier tourist destination in the Commonwealth, the Pocono Mountains. With a national reputation, the Pocono region attracts 24.5 million visitors per year and 8.5 million overnight guests. No other Applicant's region comes close. And located adjacent to the largest market in the nation, the Pocono region is best able to attract new tourists through new attractions, such as a casino at Fernwood. The current impact of tourism on Pennsylvania from the Pocono Mountains is \$1.3 billion.

**Bushkill is currently operating profitably.**

Unlike Woodlands, Bushkill operates its resort at a profit. The Applicants with options on Gettysburg and Holiday Inn have no track record of operating their proposed locations.

**Bushkill is a true resort.**

Bushkill is a large resort offering multiple dining and amenity options. Even after building a casino, Bushkill will have the greatest amount of meeting and conference space of any Applicant. Gettysburg, unlike Bushkill, is removing its only true amenity to create a casino space.

**Bushkill will open a casino as an amenity to its resort.**

Bushkill stands alone in its ability to provide players to its casino from within its resort and from overnight guests. No other Applicant has the overnight capacity and only Woodlands has a similar number of amenities to support play. Bushkill patrons will have only a short drive west on Route 80 to reach the resort compared to a 3.5 to 5 hour drive each way for Woodlands patrons, limiting their ability to make any real use of an amenity. Neither Holiday Inn nor Gettysburg have sufficient amenities to support their projected levels of play, straining their ability to accommodate guests in their casino without ignoring or circumventing the requirements of the Act.

### **Bushkill can open quickly without legal action from licensees or community groups.**

There are no objectors to the Bushkill project with legal standing to oppose the grant of the license. Holiday Inn and Woodlands both face Intervenor, current Category 1 licensees with standing to commence litigation. Gettysburg faces significant local opposition, and with their myriad local issues such as zoning, water, Highway Occupancy Permit/s and land development, there is ample opportunity for the opposition to slow or delay their project as seen in Philadelphia.

### **Bushkill can operate within the restraints of the Category 3 license.**

By providing the most rooms and sleeping accommodations and by having a significant choice of amenities, Bushkill can best support the requirements of the Act. As Bushkill currently attracts 84% of its patrons from out of state, the most of any Applicant, it has the greatest opportunity to continue to do so (up to 70% out of state play from both overnight and day-guests, according to Penn National's projections. Notably, even Isle of Capri projects 80% out of state play for Bushkill). This allows Bushkill to meet the entry constraints placed on Category 3 licensees without straining the requirements of the Act and competing directly with Category 1 and 2 licensees. Bushkill is the only Applicant that can say this. By contrast, Woodlands, even in the unlikely event it is able to attract day trippers from 200 miles, cannot claim that those guests will have time to spend using an amenity and any significant time in the casino before having to face a long drive home. Long drives and limited or no real amenities means that the other Applicants must manufacture amenity use to realize casino play. Bushkill's short drive times and multiple amenities means that its patrons can actually do what the Act intended, use the resort and then enter the casino as a real patron of the resort.

### **Bushkill best supports the goals of diversity within the Act**

With 37.8% diversity in a county with 28.7% minority residents, Bushkill has already proven its commitment to a diverse workforce. This commitment is important to Bushkill, because it also reflects the diversity of its market.

### **Bushkill best supports the goals of new job creation within the Act**

Bushkill will create 180 construction jobs, 360 full time casino jobs and an additional 552 jobs at the resort and in the community with the addition of a casino.

### **Bushkill seeks its last opportunity for a license.**

Due to recent changes to mileage restrictions in the gaming legislation, this is the last chance for Bushkill to obtain a casino license at its Fernwood Hotel & Resort. Woodlands and Gettysburg would be able to apply for the Category 3 license available in 2017.



# EXHIBIT "B"

All scenarios are based on a sample week of actual GTR for all PA Casinos (Nov 8 - Nov 14)

Raw Data - No Cat 3 on line					
	Category	Weekly GTR	Weekly Assessment	Allocation	52 Week Equivalent to Fund
Mohegan Sun	1	4,156,470	494,428	535,964	33,070,127
Paris	1	6,860,312	822,904	801,219	41,663,390
Chesler Downs	1	5,090,973	570,880	734,451	36,191,441
Presque Isle Downs	1	3,346,999	398,138	512,110	26,629,731
The Meadows	1	4,690,153	560,814	721,067	37,497,051
Penn National	1	4,685,257	555,423	714,420	37,148,850
SUB TOTAL CAT 1		28,832,165	3,202,562	4,119,281	214,201,887
Mount Airy	2	2,831,902	338,805		
Sands Bethlehem	2	4,081,971	558,938		
Rivers	2	4,933,456	588,653		
Sugar House	2	2,352,237	279,807		
SUB TOTAL CAT 2		14,799,566	1,766,463		
Grand Total		43,631,731	4,969,025		
			4,119,281		
Bushkill Cat 3 on line at \$107 million - 15% cannibalized as follows: (5% from Mt. Airy / 5% from The Sands / 5% from Mohegan Sun)					
	Category	Weekly GTR	Weekly Assessment	Allocation	52 Week Equivalent to Fund
Mohegan Sun	1	4,156,470	481,953	614,764	31,867,738
Paris	1	6,860,312	620,682	825,999	42,951,660
Chesler Downs	1	5,090,973	568,959	757,166	39,372,037
Presque Isle Downs	1	3,346,999	381,429	507,604	26,395,303
The Meadows	1	4,690,153	558,614	743,399	38,656,771
Penn National	1	4,685,257	551,441	736,516	38,298,838
SUB TOTAL CAT 1		28,735,260	3,145,079	4,185,449	217,843,344
Mount Airy	2	2,729,017	311,003		
Sands Bethlehem	2	4,579,080	521,810		
Rivers	2	4,933,456	582,225		
Sugar House	2	2,352,237	286,085		
SUB TOTAL CAT 2		14,593,790	1,683,133		
Bushkill	3	2,057,072	234,488		
Grand Total		46,385,768	5,042,710		
			4,185,449		
					Bushkill's Annualized Positive Impact to the Fund
					3,441,747
Nemacolin Cat 3 on line at \$88.8 million - 15% cannibalized as follows: (10% from The Meadows / 5% from The Rivers)					
	Category	Weekly GTR	Weekly Assessment	Allocation	52 Week Equivalent to Fund
Mohegan Sun	1	4,156,470	480,207	631,537	32,839,945
Paris	1	6,860,312	620,129	815,951	42,408,782
Chesler Downs	1	5,090,973	586,457	747,591	38,074,717
Presque Isle Downs	1	3,346,999	389,887	508,546	26,444,376
The Meadows	1	4,569,676	558,116	733,598	38,107,904
Penn National	1	4,685,257	552,649	727,202	37,814,497
SUB TOTAL CAT 1		28,709,688	3,168,541	4,154,427	216,550,221
Mount Airy	2	2,831,902	327,177		
Sands Bethlehem	2	4,081,971	540,920		
Rivers	2	4,889,217	582,553		
Sugar House	2	2,352,237	271,780		
SUB TOTAL CAT 2		14,735,327	1,702,409		
Nemacolin	3	1,284,769	148,433		
Grand Total		44,729,784	5,017,382		
			4,154,427		
					Nemacolin's Annualized Positive Impact to the Fund
					2,348,625
Gettysburg Cat 3 on line at \$93.5 million - 15% cannibalized as follows: (15% from Hollywood Casino)					
	Category	Weekly GTR	Weekly Assessment	Allocation	52 Week Equivalent to Fund
Mohegan Sun	1	4,156,470	473,225	628,962	32,706,016
Paris	1	6,860,312	617,077	820,156	42,648,122
Chesler Downs	1	5,090,973	585,651	751,810	39,094,111
Presque Isle Downs	1	3,346,999	381,084	506,472	26,336,529
The Meadows	1	4,690,153	555,370	738,141	38,383,309
Penn National	1	4,415,480	550,227	731,306	38,027,908
SUB TOTAL CAT 1		28,568,396	3,142,617	4,176,848	217,165,896
Mount Airy	2	2,831,902	322,419		
Sands Bethlehem	2	4,081,971	533,054		
Rivers	2	4,933,456	581,680		
Sugar House	2	2,352,237	287,888		
SUB TOTAL CAT 2		14,799,566	1,684,988		
Gettysburg	3	1,798,462	204,759		
Grand Total		46,166,423	5,032,345		
			4,176,848		
					Gettysburg's Annualized Positive Impact to the Fund
					2,994,399
Holiday Inn Cat 3 on line at \$75.8 million - 15% cannibalized as follows: (15% from Hollywood Casino)					
	Category	Weekly GTR	Weekly Assessment	Allocation	52 Week Equivalent to Fund
Mohegan Sun	1	4,156,470	477,132	630,300	32,778,898
Paris	1	6,860,312	618,182	818,708	42,488,725
Chesler Downs	1	5,090,973	588,667	748,647	38,929,685
Presque Isle Downs	1	3,346,999	384,211	507,507	26,395,057
The Meadows	1	4,690,153	556,361	735,036	38,221,853
Penn National	1	4,486,615	551,212	728,230	37,867,947
SUB TOTAL CAT 1		28,819,523	3,153,767	4,166,678	218,581,944
Mount Airy	2	2,831,902	325,081		
Sands Bethlehem	2	4,081,971	537,456		
Rivers	2	4,933,456	586,324		
Sugar House	2	2,352,237	270,019		
SUB TOTAL CAT 2		14,799,566	1,698,881		
Holiday Inn	3	1,457,616	167,324		
Grand Total		44,876,703.90	5,019,971		
			4,166,678		
					Holiday Inn's Annualized Positive Impact to the Fund
					2,460,348

**EXHIBIT "C"**

Casino	State	Revenue	Slots	WPU	Time Period
Woodbine	Ontario	597,800,000	2,085	786	Fiscal 2009/2010
Woodbine	Ontario	621,300,000	2,009	847	Fiscal 2008/2009
Elgin	Illinois	281,547,405	1,149	671	2008
Elgin	Illinois	367,348,648	1,151	874	2007
Harrah's Joliet	Illinois	263,528,262	1,187	608	2008
Harrah's Joliet	Illinois	344,096,500	1,187	794	2007
Hollywood Aurora	Illinois	239,694,821	1,172	560	2007
Thunder Valley	Nevada		2,700	560	2005

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**EXHIBIT "D"**

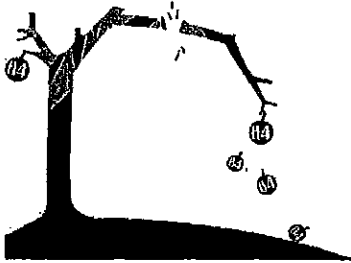
post-gazette.com BUSINESS

## Splintering 84 Lumber navigates rough seas

**Hardy family breaking up its empire, seeking government help, to cope with debt load**

Friday, October 22, 2010

By Tim Grant, Pittsburgh Post-Gazette



Katy Buchanan/Post-Gazette

The nation's housing industry has yet to recover from its historic crash four years ago, and for a company like 84 Lumber, which had staked its fortunes on rising home appreciation and growing demand, it has been the worst of times.

At the height of its boom years, the privately held building materials company, which supplies products directly to professional contractors and builders, employed more than 10,000 people at 319 stores across the country.

But as housing starts nationwide dropped from a peak of 1.8 million annually in 2006 to a current annual rate of about 432,000, 84 Lumber has been forced to close 200 store locations and lay off about 6,230 workers.

Struggling to stay in business, the 54-year-old company based in Eighty Four also has had to sell substantial real estate holdings during the worst real estate market in history in order to raise \$155 million it desperately needed to pay off high-interest debt.

Representatives from 84 Lumber did not respond to several interview requests for this report. However, in a letter dated Aug. 25 to Fayette County Commissioners, company president Margaret Hardy Magerko described her company as having "sustained significant cash losses."

She said the rate of sales at 84 Lumber declined during the housing downturn from \$5 billion in March 2006 to \$1.2 billion in February 2010.

The company's financial health went from bad to worse during the credit crunch of 2008 when 84 Lumber was forced to refinance its unsecured loans at a time when borrowed money was hard to come by.

With its back against the wall, the company borrowed \$195 million from Cerberus Capital Management in April 2008 under terms that required it to pay 18 percent interest and adhere to a covenant that required all revenue generated by asset sales to be used to pay the debt rather than be used for cash flow to support the company.

This July, after selling \$155 million of its real estate assets to chip away at the Cerberus loan, 84 Lumber took the rare step of appealing to government officials in Fayette and Washington counties to support a federal loan application to pay off \$55 million remaining on the high-interest loan.

Commissioners in both counties voted to sponsor the loan applications. Fayette County commissioners sponsored a \$15 million loan application with the U.S. Department of Housing and Urban Development. Washington County supported another \$5 million in HUD loans.

Mrs. Magerko contributed \$5 million of her own money and \$10 million was raised by selling more company real estate.

After the Fayette County commissioners agreed to support the \$15 million federal loan in August, it paved the way for another unidentified bank to grant 84 Lumber a \$20 million loan, which had already cleared its credit committee at that time. The Fayette County vote essentially reassured the bank that the entire financing package 84 Lumber was putting together would work out.

Not all the commissioners supported the proposals. Washington County Commissioner Larry Maggi voted against the measure, although it passed 2 to 1.

"I just have a philosophical problem with government guaranteeing loans for private industry," Mr. Maggi said. "We get \$4.7 million a year from the federal government for our community development block grant for the public interest. We are committing that if 84 Lumber defaults on its loan.

"We are literally giving them this \$5 million to do whatever they want. We are committing public tax dollars that would go to Washington County if this loan defaults. I think we made a bad decision for the future of the county."

Fayette County Commissioner Vincent A. Vicites said he voted to support 84 Lumber's application because it was a way to save jobs not only in Fayette County, but also across the region.

As of August, 84 Lumber employed about 3,700 workers in 35 states. About 750 live in Pennsylvania.

"They put all their properties up across the United States as collateral," Mr. Vicites said.

The building supply industry has become more crowded since 84 Lumber was founded in 1956 by Joe Hardy and his brothers.

When big box home improvement companies Home Depot and Lowes entered the residential market in the early 1990s, 84 Lumber carved a niche for itself with professional builders, particularly those who built single family homes.

Today, despite its financial woes, 84 Lumber still ranks No. 4 on the list of Top 20 residential construction suppliers and distributors compiled by trade publication ProSales. The company's 2009 sales were reported at \$1.2 billion. The No. 1 company is ABC Supply, based in Beloit, Wis., with sales of \$4 billion.

"Only seven pro dealers of the 100 we surveyed said their sales went up from last year," said Craig Webb, editor of ProSales. "Thirty-nine percent of them had decreased sales of more than 25 percent."

Some of the changes 84 Lumber has made to address the housing crisis include re-sizing the company, selling assets, gaining new investment from the owners, suspending distribution of profit to the ownership and carrying out strategies to diversify its business away from single family housing.

Mrs. Magerko told the Fayette County commissioners in her August letter that she was confident that the housing market would ultimately recover and that 84 Lumber had long-term viability.

Tim Grant: tgrant@post-gazette.com or 412-263-1591.

First published on October 22, 2010 at 12:00 am

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**EXHIBIT "E"**

## **PITTSBURGH TRIBUNE-REVIEW**

### **Washington County backs \$5 million loan to 84 Lumber Co.**

By Joe Napsha  
PITTSBURGH TRIBUNE-REVIEW  
Friday, October 8, 2010

The 84 Lumber Co.'s application for a \$5 million low-interest loan from the federal government won the Washington County commissioners' support Thursday, putting the homebuilding chain one step closer to refinancing a \$55 million high-interest loan.

The prospective loan from the Department of Housing and Urban Development will be backed by \$10 million of real estate owned by 84 Lumber, including the company's headquarters and office buildings in Eighty Four, as well as all of the chain's retail stores in Washington County, said Commissioner Bracken Burns, who voted to sponsor the loan.

"They've been a stalwart of the business community for over 50 years. For us to walk away from them in their moment of need would have been unworthy," said Burns, a Democrat.

Commissioner Diana Irey, a Republican, joined Burns in supporting the loan. Democrat Larry Maggi voted against it, saying he was not opposed to 84 Lumber but to providing the financial support to a business.

Washington County is backing the loan with its annual allocation of about \$4.6 million in Community Development Block Grants that it receives from HUD. The county still will be able to distribute its annual allocation for projects in communities in the county, the commissioners said.

If 84 Lumber were to default on the 17-year-loan, the county would owe any unpaid balance and could seize the real estate pledged as collateral and sell it to recoup any lost money, Irey said. Annual payments for the loan will range from \$220,000 to \$550,000.

Irey said she is philosophically opposed to government subsidizing businesses, but the county supports businesses through various tax abatement programs, and infrastructure support for projects such as Southpointe in Cecil.

"It's doesn't affect our allocation, and we have a safety net," Irey said of the collateral.

Washington County's sponsorship of the loan was necessary for 84 Lumber Co. to close on \$20 million in financing through Wells Fargo, which it expects to



receive by the end of the month, 84 Lumber spokesman Jeff Nobers said. 84 Lumber has applied to HUD for the \$5 million, and has applied for a \$15 million loan for money from the same source, with Fayette County as the sponsor.

The Fayette County commissioners voted in August to sponsor the \$15 million loan application through its Community Development Block Grant program, with 84 Lumber pledging real estate worth \$30 million as collateral.

If the \$20 million in government funding is approved, plus the \$20 million from Wells Fargo of unencumbered real estate, then the company can refinance \$45 million it has remaining of a high interest loan from Cerebus Management, Nobers said.

The \$5 million shortfall would come from 84 Lumber President Maggie Hardy Magerko, Nobers said. 84 Lumber had tried unsuccessfully to get Cerebus to refinance the loan and lower the 18 percent interest rate, but it refused, he said.

The Meadows Racetrack and Casino at the Meadowlands had opposed Washington County sponsoring the loan because it said that the subsidy would allow Magerko to channel more of her own money toward a possible casino at Nemacolin Woodlands Resort in Farmington, which she owns.

Sean Sullivan, general manager of the Meadows Racetrack and Casino, could not be reached for comment.

Nobers said, however, that the financing for the prospective casino is being handled by the Isle of Capri Casinos, and Nemacolin is basically providing the location for that firm's casino at the resort's Wildside building that houses an arcade and bowling alley.

Washington County's agreement with 84 Lumber prevents the company from using money sponsored by the county for a casino in Fayette County, Burns said.

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**EXHIBIT "F"**

## **PITTSBURGH TRIBUNE-REVIEW**

### **Nemacolin relies on foreign guest workers**

By Amy Crawford  
TRIBUNE-REVIEW  
Sunday, October 3, 2010

People from Ukraine, Uzbekistan, the Philippines, and other far-flung countries have been coming to the village of Farmington in Fayette County for years.

They work as housekeepers, waiters and janitors at the posh Nemacolin Woodlands Resort & Spa in the mountains about 13 miles southeast of Uniontown. In their off-hours, they live in nondescript apartment buildings off Route 40 in Wharton Township and shop at local convenience stores. They generally keep to themselves, local residents say, although the younger ones sometimes host loud parties late at night.

Many of these Nemacolin employees are among the 66,000 foreign guest workers whom the United States allows to enter the country every year through the H2B visa program. The rest are students, holding J-1 visas that allow them to work for up to three months.

"I help them when they come in and do the best I can," said Gina Hayden, a clerk at the Sunoco on Route 40. "Usually in a group, there's one that speaks English and can get what they need across."

"It's really hard to communicate with them," acknowledged Soni Fieldson, who works at nearby Stoney's Beer Distributor. "But they're nice."

Guest workers have become common at vacation spots such as North Carolina's Outer Banks and Ocean City, Md. Though there are far fewer guest workers in Southwestern Pennsylvania, some local employers say they could not get by without them.

#### **GOOD-FAITH EFFORT**

Employers apply for permission to hire H2B workers through the Labor Department, and they must demonstrate that they made a good-faith effort to hire Americans before they are allowed to bring in foreign workers.

Labor Department records from 2009, the last year for which data is available, show that businesses in Allegheny, Westmoreland and Fayette counties requested more than 900 certifications that would allow them to hire H2B workers. Most of the employers were landscape companies, including Superior Scapes in New Stanton, which requested certification for 14 workers.

Nemacolin Woodlands applied for 250 worker certifications and received 234,

the most of any employer in the region, records show. The positions the resort sought to fill included housekeepers, janitors, laundry workers, kitchen helpers and cooks at wages ranging from \$7.15 to \$9.50 per hour.

Nemacolin requested more certifications than any other employer, but according to General Manager Chris Plummer, it used a fraction of those.

Plummer said that at the end of September, the resort's 1,022 total employees included 35 H2B holders and 35 others holding J-1 visas. During the peak summer season, he said, the resort had about 90 foreign workers out of 1,200 total.

Guest workers filled in when the resort could not find employees locally, he said.

"This is at every resort in the country," Plummer said. "Would I rather have American workers? Absolutely. They don't cost as much, and they can stay longer."

A hotel or restaurant employer who offers good wages and benefits can find employees willing to fill those jobs, said Ivana Krajcinovic, a staff representative for Unite Here Local 57, which represents about 1,500 workers in the Pittsburgh region's hotel and hospitality industry.

"When an employer says they can't find workers, that really means they can't find workers who will work for poverty wages and no benefits," said Krajcinovic, a union representative in the hotel industry for 18 years.

Nemacolin works with Royal Palms, a Naples, Fla., company, to find its H2B workers, legally classified as contractors. Owner Aziz Obidov said Royal Palms handles visa paperwork and makes sure employees can work legally before supplying about 300 per year to resorts and hotels nationwide.

"It takes about six months to get someone into the country, and then they're closely watched," Obidov said. "We provide payroll, transportation, housing, all the logistics."

These services make hiring overseas more expensive than hiring locally, Plummer said.

Superior Scapes owner George Brown said six H2B visa holders from Mexico were working for the company this summer. It was the ninth year his company had employed guest workers, he said.

His son, George Brown Jr., said that while the company makes an effort to hire locally, "there's a lack of interest for the type of labor that we need."

"We can't get people to respond, and if they do, they don't last for longer than a week," the father said, noting that the work — digging ditches, raking and installing patios — is strenuous.

The business employs several of the same men year after year, he said, and he and his son have found them to be loyal, religious and hard-working.

The company pays for their housing and transportation, and the Browns said that hiring Americans would save them money.

Other vacation spots in Southwestern Pennsylvania said they do not hire from overseas, though some have in the past.

Anna Weltz, a spokeswoman for Seven Springs Mountain Resort in Somerset County, said that while the resort had once hired some Polish students through the J-1 visa program, no foreign workers were hired this year.

Kennywood Entertainment, which owns the Idlewild and Sandcastle theme parks, does not bring workers from overseas. "We have such a great pool of high school and college students, we've never had the need," spokesman Jeff Fillicko said.

## **PUBLIC CRITICISM**

Less than 1 percent of Fayette County's population is foreign-born, according to the census. Although they stand out in Farmington, the Nemacolin workers attracted little attention elsewhere in the county until June, when a van transporting seven of them crashed on Route 381, killing Russian-born Zhanna Zofrin, 68.

Two months after the crash, 84 Lumber, whose president is Nemacolin owner and President Maggie Hardy Magerko, applied for a \$15 million taxpayer-funded loan. The loan, sponsored by Fayette County, would come through the state Community Development Block Grant program, and the company said the funds would preserve 325 jobs. Nemacolin and 84 Lumber are separate entities, and the loan was unrelated to the resort.

At a public meeting held in Uniontown to discuss the loan, some county residents expressed concern that the immigrant workers at Nemacolin were taking jobs that could have gone to local people. According to the Bureau of Labor Statistics, Fayette County had an average unemployment rate of 9.4 percent over the past year and hit 10 percent in August, when 6,700 were unemployed.

"That ticked a lot of people off," said Bob Foltz, who hosts a conservative radio talk show on Uniontown-based WMBS. Foltz said listeners began calling about the foreign workers shortly after 84 Lumber requested the loan.

Uniontown business owner Brian Oros, 49, has been one of the most vocal.

"How can they be talking about creating jobs when they're bringing in foreigners?" Oros asked. "I don't believe that they can't get people from here."

Plummer said the resort did all it could to hire locally.

"Everyone thinks we have foreign workers and students because it's cheaper," he said. "That's not true. If you want to work at one of the top resorts in the country, we need workers, and we want workers from Fayette, Washington and other counties."

*Amy Crawford can be reached at [acrawford@tribweb.com](mailto:acrawford@tribweb.com) or 724-850-2856.*

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